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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ISREAL HICKS

Appeal 2009-005636
Application 10/081,928
Technology Center 3600

Decided: April 26, 2010

Before: JENNIFER D. BAHR, STEFAN STAICOVICI, and FRED A. SILVERBERG, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Isreal Hicks (Appellant) appeals under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 26, 29, 30, 48, 50, 51, 53-55, 57, 58, and 60. Claims 1-11, 21-25, 27, 28, 31-47, 49, 52, 56, 59, and 61 have been canceled. Claims 12-20 have been withdrawn from consideration. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellant's claimed invention is directed to a tire-hanging device. Spec. 2:3.

Claim 26, reproduced below, is illustrative of the claimed invention.

26. A tire hanger comprising:

 a device configured to removably engage a horizontal support member of a vehicle hoist at a user-selected position, the device having:

 a first end arranged to be mounted by at least partially circumscribing the horizontal support member without the need for fasteners;

 a second end having a hook configuration to engage a wheel; and

 a middle section disposed between the first end and the second end, the middle section having a length suitable for engaging the hook configuration with the wheel.

The Rejections

Appellant seeks review of the Examiner's rejections under 35 U.S.C. § 102(b) of claims 26, 29, 30, 48, 50, 51, 53-55, 57, 58, and 60 as anticipated by US 5,816,016 issued to Zarnick (Oct. 6, 1998) and of claims 58 and 60 as

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anticipated by International Application No. WO 00/55031 of Gibson and Starling (published Sep. 21, 2000)¹.

SUMMARY OF DECISION

We AFFIRM.

ISSUES

In arguing each of the rejections, Appellant groups all the claims together. Therefore, claims 29, 30, 48, 50, 51, 53-55, 57, 58, and 60 stand or fall with representative claim 26 with respect to the Zarnick rejection, and claim 60 stands or falls with representative claim 58 with respect to the Starling rejection. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The first issue presented in this appeal is whether Zarnick's hook clip is "arranged to be mounted by at least partially circumscribing the [vehicle hoist] horizontal support member" and whether Zarnick's clip end has "a hook configuration to engage a wheel."

The second issue presented in this appeal is whether Starling's plates bolted to a vehicle hoist describes an "open end" of the hoist wrap section, and whether Starling's wheel hanger pin is "arranged to engage a wheel."

PRINCIPLES OF LAW

Statements of intended use in an apparatus claim do not distinguish the claim over the prior art apparatus. *In re Sinex*, 309 F.2d 488, 492 (CCPA 1962). If a prior art structure is capable of performing the intended use as

¹ Both the Examiner and Appellant refer to this reference as "Starling," which we adopt for consistency of the record.

recited in the preamble, then it meets the claim. *See, e.g., In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997) (anticipation rejection affirmed based on Board's factual finding that the reference dispenser (a spout disclosed as useful for purposes such as dispensing oil from an oil can) would be capable of dispensing popcorn in the manner set forth in appellant's claim 1 (a dispensing top for dispensing popcorn in a specified manner)).

ANALYSIS

Issue (1) - Anticipation by Zarnick

Appellant argues that Zarnick's hook end, which hooks to an I-beam, is only an inch-and-a-half long. Appeal Br. 7. Appellant further alleges that there are no vehicle hoist members with such a width. *Id.* Therefore, Appellant concludes that Zarnick's hook end cannot "partially circumscrib[e] the horizontal support member [of the vehicle hoist]," as recited in claim 26. *Id.*

Claim 26 does not specify any particular size for the end that circumscribes the horizontal support member, nor does claim 26 specify the size or shape of the horizontal support member itself. Instead, claim 26 just mentions that the first end must "partially circumscrib[e] the horizontal support member." Notably, the claim does not state that the horizontal support member is the arm of an automobile hoist that holds the weight of an automobile. Instead, the support member could be any horizontal member of any hoist that holds any vehicle of any size. For example, a motorcycle hoist may have a smaller horizontal support than a hoist found in an automobile repair shop. In addition, the horizontal arm that directly supports the weight of a vehicle is likely to be larger than a horizontal support that

does not support the weight of the vehicle, such as a horizontal support beam between two vertical support beams. Therefore, Appellant's arguments that claim 26 requires a horizontal support of a particular size larger than the hook end of Zarnick is not based on any limitations found in claim 26.

Appellant further argues that Zarnick does not describe the "second end" as recited in claim 26. Appeal Br. 7-9. First, Appellant argues that the hook in Zarnick faces the wrong direction. *Id.* However, as pointed out by the Examiner, claim 26 does not specify which direction the hook faces. Ans. 6. Next, Appellant argues that Zarnick's hook cannot engage a wheel unless the wheel has a width of less than 1.06". *Id.* However, claim 26 does not specify a particular wheel size or type that must fit on the hook. Instead, claim 26 merely requires a second end that must "engage a wheel." Even assuming Appellant's assertion that Zarnick's hook could only engage a wheel of 1.06" were accurate, Zarnick's hook would be capable of engaging such a wheel.

Issue (2) - Anticipation by Starling

Claim 58 requires a hoist wrap section having an "open end" arranged to "removably engage with at least three sides of a horizontal support member of a vehicle hoist." Appellant argues that Starling does not describe a hoist wrap section having an "open end." Appeal Br. 11-12. The Examiner considers the opening between the bolts 136 the "open end." Ans. 4, 8.

Claim 58 does not define the "open end" with relation to any particular construction or orientation of the hoist wrap section. The "open end" merely is required to be capable of removably engaging with at least

three sides of the horizontal support member. We find that Starling describes a tire support bracket 120 having top and bottom mount plates 130, 132 attached to opposite sides of a horizontal lift arm 26 by way of bolts 136. Starling, p. 6, ll. 10-16, fig. 4. The bolts 136 secure the tire support bracket 120 by pulling together the two plates 130 and 132. *Id.* We find that the area defined by plates 130 and 132 and the bolts 136 is an "open end" of the tire support bracket that could removably engage with at least three sides of a horizontal support member of a vehicle hoist. For example, as pointed out by the Examiner (Ans. 4), the two plates 130, 132 and the inner pair of bolts 136 are capable of engaging three sides of a support member inserted into this open end (from the front end as depicted in fig. 4) and secured by tightening the bolts.

CONCLUSIONS

- (1) The Examiner did not err in finding that Zarnick describes a "first end" that mounts to a horizontal support member of a vehicle hoist, nor did the Examiner err in finding that Zarnick describes a "hook config[ure]d to engage a wheel." Therefore, we affirm the Examiner's rejection of claim 26 as anticipated by Zarnick, as well as of claims 29, 30, 48, 50, 51, 53-55, 57, 58, and 60, which stand or fall with claim 26.
- (2) The Examiner did not err in finding that Starling describes "an open end arranged to removably engage ... a horizontal support member of a vehicle hoist," as recited in claim 58. Therefore, we affirm the Examiner's rejection of claims 58 and 60 as anticipated by Starling.

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DECISION

The Examiner's decision is affirmed as to claims 26, 29, 30, 48, 50, 51, 53-55, 57, 58, and 60. No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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